

FINAL BILL REPORT

ESHB 3222

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Synopsis as Enacted

Brief Description: Modifying excise tax exemptions for the handling and processing of livestock manure.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Pettigrew, Haler, Chandler, Kretz, Hinkle, Kristiansen, Holmquist and Linville).

House Committee on Finance

Senate Committee on Agriculture & Rural Economic Development

Senate Committee on Ways & Means

Background:

Retail sales and use tax. The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. The use tax applies if retail sales tax has not been collected. Both the state and local governments impose sales and use taxes; the state rate is 6.5 percent and the average local rate is 2 percent statewide. Sales taxes are collected by the seller from the buyer at the time of sale. Use tax is remitted directly to the Department of Revenue (Department). State revenues are deposited to the State General Fund.

Water pollution control and animal feeding operations. The federal Clean Water Act (CWA) provides that the discharge of pollutants from point sources to surface waters is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. The state Water Pollution Control Act requires any person who conducts a commercial or industrial operation which results in the disposal of liquid or solid waste material into waters of the state to obtain a permit. Waters of the state include both surface and ground waters.

Animal feeding operations (AFOs) are agricultural enterprises where animals are kept and raised in confined situations. Such operations congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. Feed is brought to the animals rather than allowing the animals to graze or otherwise seek feed in pastures, fields, or on rangeland. There are approximately 450,000 AFOs in the United States. Concentrated animal feeding operations (CAFOs) are a relatively small number of AFOs that are regulated by the U.S. Environmental Protection Agency (EPA).

Dairy nutrient management and anaerobic digesters. In 1998 the Legislature enacted the Dairy Nutrient Management Act (DNMA) to address water quality concerns associated with dairy farm nutrients. The legislation required that each dairy farm in the state develop and implement a nutrient management plan (NMP) that met standard specifications by December 31, 2003. Plans included both physical and management elements. Physical elements

included items such as pumps, pipes, spray guns, lagoons, concrete pads and structures, gutters, and downspouts.

In 2001 the Legislature approved a retail sales and use tax exemption to help dairy farmers comply with the DNMA. Once a dairy nutrient management plan has been certified as fully implemented, the purchase of services and replacement equipment and parts necessary to maintain the plan are exempted from the retail sales and use tax. The same 2001 legislation also provided an exemption for the acquisition of anaerobic digesters for the primary purpose of treating dairy manure. Anaerobic digesters are facilities that use bacteria to process manure into biogas and dried manure in the absence of oxygen.

Recent regulatory activity. Since 2003, there have been statutory and rule changes at the state and federal levels that broaden dairy nutrient management requirements to also encompass certain livestock operations. In February 2003, the EPA adopted rules affecting the regulation of AFOs and CAFOs for the purposes of controlling water pollution. These rules expanded the type and number of CAFOs required to obtain NPDES permits.

In February 2005, the federal Second Circuit Court of Appeals (Court) issued a ruling that overturned aspects of the 2003 EPA rule. The Court vacated rule provisions that allow permitting authorities to issue permits to CAFOs without including the terms of the CAFO's NMP in the permit and without the NMP being reviewed by the permitting agency and available to the public. The Court also invalidated the provision that requires all CAFOs to apply for an NPDES permit unless they can demonstrate that they have no potential to discharge. The Court found that the "duty to apply" provision, which the EPA had based on a presumption that all CAFOs have at least a potential to discharge, was invalid, because the CWA subjects only actual discharges to regulation rather than potential discharges.

In response to the EPA rule change and the court ruling, the Department of Ecology (DOE) is developing a general CAFO NPDES permit to become effective in early 2006. The general permit will require large and certain medium CAFOs to develop and implement nutrient management plans by December 31, 2006.

Conservation Districts and Nutrient Management Plans. Conservation districts are a subdivision of state government engaged in various activities relating to the conservation of renewable natural resources. There are currently 46 districts statewide authorized to carry out surveys and research, educational and demonstration projects, preventative and control measures, and projects or programs for the conservation of renewable natural resources located within district boundaries. Districts provide technical and financial assistance to landowners to help plan and implement conservation practices.

Under the DNMA, conservation districts are required to provide technical assistance to dairy producers in developing and implementing dairy nutrient management plans and must review, approve, and certify such plans. Written plans are submitted for approval to the local conservation district where the dairy farm is located. Upon approval of the written plan and after the elements necessary to implement the plan have been constructed or put in place and

are being used as designed and intended, the conservation district and dairy producer certify the plan.

Natural Resource Conservation Service Field Office Technical Guides. The Natural Resource Conservation Service (NRCS) is an agency within the United States Department of Agriculture. The NRCS issues Field Office Technical Guides (FOTGs) as primary scientific references containing technical information about the conservation of soil, water, air and related plant and animal resources. The FOTGs are localized for use by field offices to apply specifically to the geographic area for which they are prepared. Within each FOTG is a section detailing standards and specifications for various conservation practices, one of which is nutrient management.

Summary:

The sales and use tax exemptions concerning dairy nutrient management equipment and anaerobic digesters are modified and broadened to include livestock operations.

Persons who are eligible for the exemption concerning nutrient management equipment include:

- licensed dairies with certified dairy nutrient management plans;
- animal feeding operations with a state waste discharge permit; and
- AFOs with nutrient management plans approved by a conservation district as meeting Natural Resource Conservation Service Field Office Technical Guide (FOTG) standards.

A conservation district is required to maintain a list of eligible AFOs with NMPs that have been approved by the district as meeting Natural Resource Conservation Service FOTG standards. The Department of Agriculture must provide a list to the Department of Revenue of eligible dairies with certified NMPs and AFOs with waste discharge permits.

Eligible projects are facilities and services necessary and used exclusively for a livestock NMP. An exemption for such equipment or facilities is available only after the NMP is certified under state law, approved as part of a state water pollution control permit, or approved by a conservation district as meeting Natural Resource Conservation Service FOTG standards.

Persons eligible to receive an exemption on the acquisition of anaerobic digesters include those who use the equipment primarily to treat livestock manure. Anaerobic digesters qualify for exemption only if they are used primarily to treat livestock manure.

The Conservation Commission is required to compile information on NMPs approved by conservation districts during the 2005-2007 fiscal biennium and on the utilization of the tax incentives. The Commission must submit a report to the Legislature by December 2007.

Votes on Final Passage:

House	77	21
Senate	44	3

Effective: July 1, 2006